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***OFFICE OF DISCIPLINARY COUNSEL
2005 ANNUAL REPORT***

The Office of Disciplinary Counsel (ODC) is part of a comprehensive lawyer regulation system established by the Montana Supreme Court. Effective July 1, 2002, the system consists of ODC and the Commission on Practice (COP). ODC performs central intake functions and processes, investigates and prosecutes complaints against lawyers that are within the jurisdiction of the Court. COP hears and decides the complaints and, in appropriate cases, makes recommendations to the Court for discipline. COP and ODC are under the direct supervision of the Montana Supreme Court. There are nine lawyers and five non-lawyers on the COP. The Court appoints both the lawyer and the non-lawyer members of COP.

Number of Complaints

From January 1 through December 31, 2005, there were a total of 485 new complaints. Of those 485 new complaints, ODC opened and docketed 329 new files on matters involving allegations of attorney misconduct, or where the complainant appealed a dismissal by ODC.

Based upon the fact that there are about 2,700 active in-state lawyers, and while some lawyers were subject to multiple inquiries, informal disciplinary complaints averaged about one for every six lawyers over the twelve-month period.

By comparison, the number of complaints received in 2005 represents an increase of about three percent over the number of complaints received in 2004, about a 35 percent increase from 2003, and 45 percent from 2002.

It should be noted that in calculating the total number of complaints, matters that were opened as pencil files and then later were opened and docketed as new informal complaint files are counted twice in the complaint total. That has been the way ODC has totaled the complaints since the creation of the office. In the opinion of the undersigned, a more accurate way of totaling the complaints is to not count those matters twice. Without the duplication, the total number of complaints for 2005 is 429. For 2004, the total would be 415. For comparative purposes, this report uses the method that was used in calculating the totals in the

prior annual reports. As of January 1, 2006, ODC, in calculating the total number of complaints, does not duplicate files that were opened as pencil files and later opened as informal complaint files.

Number of Lawyers Disciplined

In 2005, the Montana Supreme Court imposed formal disciplinary sanctions (permanent public records) on 18 Montana lawyers. The public sanctions included one disbarment, 8 suspensions, seven public censures, two transfers to disability/inactive status, and no probations. The Court also reinstated the license of one disbarred attorney.

By comparison, in 2004, 21 formal disciplinary sanctions were imposed on Montana lawyers, and in 2003, 16 formal disciplinary sanctions were imposed. There were about 58 public disciplinary orders in the ten-year period between 1992 and 2002 (compared with 55 public disciplinary orders in the last three years 2003-2005).

In 2005, COP issued an additional 51 private and informal disciplinary orders, including 10 probations, 39 private admonishments and two resignations. By comparison, in 2004, COP issued 22 private and informal disciplinary orders, including nine probations and 13 private admonishments; and in 2003, COP issued 28 private and informal disciplinary orders, including five probations, two disability inactive rulings, and 21 private admonishments.

In 2005, about one for every 150 lawyers was formally sanctioned and about one in every 53 was privately sanctioned. Or, collectively, about one in every 39 Montana lawyers (over two and one-half percent) was either publicly or privately sanctioned. In 2004, this statistic was one in every 56 lawyers and in 2003, one in every 70 lawyers.

Alternatively, 38 of 39 Montana lawyers (97.4 percent) were not subject to any disciplinary sanction last year. Montana lawyers continue to overwhelmingly represent their clients ethically. The two significant differences based on the above data is that 1) since 2003, there has been a sharp increase in public disciplinary orders (from six per year to over 18 per year average), and 2) between 2004 and 2005, an even greater increase in private disciplinary orders (from 22 in 2004 to 51 in 2005).

Cases in Inventory

Effective July 7, 2003, the Montana Supreme Court amended the Rules for Lawyer Disciplinary Enforcement to allow ODC to dismiss cases under limited circumstances. Of the 485 new informal disciplinary inquiries last year, ODC was

able to screen (i.e., not immediately docketed) 156 of those cases (about 32 percent) because they did not appear to state a disciplinary complaint. Of those 156 cases, ODC dismissed 33 (21 percent). Three of those dismissals were appealed to COP. An additional 64 were closed with no further action (40 percent). In those pencil files, the complainant did not respond to ODC's request for more information or the matter was withdrawn. Excluding ODC dismissals that were appealed, nearly 60% (94 files) resulted in the closure of the matter prior to docketing the matter and without involvement by the COP or the Montana Supreme Court. The remaining files resulted in 56 docketed informal disciplinary matters, including the three appeals. Fifteen of the screened files were carried over to 2006.

Of the 329 new files which were docketed in 2005, 205 open files carried over from 2004, 20 carried over from 2003 and 2 from 2002 (556 total open files), ODC completed intake and investigation and made reports and recommendations on 353 cases (including supplemental reviews or appeals) to the COP over the course of the six COP meetings held during the year (compared with 280 case reports in five COP meetings in 2004 and 296 case reports in six COP meetings in 2003). This represents an increase of an average of 59 case reports per meeting in 2005, compared with 56 case reports per meeting in 2004 (five percent increase) and 49 case reports per meeting in 2003 (17 percent increase).

Of the 329 new files that were opened in 2005, ODC also issued dismissal letters in seven of those cases prior to COP review (about two percent of the open files). None of ODC's dismissals of docketed matters were appealed to COP.

Including both screened files and docketed matters, ODC prepared a total of 393 reports or dismissal letters, as compared with 342 in 2004 (13 percent increase) and 325 in 2003 (17 percent increase).

One hundred and eighty-six (186) cases were in inventory and carried over to 2006, nearly all of them less than 120 days old (compared with 110 cases carried over from 2004 to 2005 and 72 cases from 2003 to 2004).¹

At the end of 2005, there were 30 open formal cases. In six of these cases, there were pending Rule 26 consents to discipline prior to any formal charges being filed. There were 20 pending formal actions before the Montana Supreme Court. ODC had four additional formal complaints to file pursuant to COP's recommendation.

¹ Only one Review Panel met at the November, 2005 meeting due to a lack of quorum for the other Review Panel to meet as required by the RLDE.

In addition to the ODC's handling of complaint investigations and prosecutions, in 2005 its staff received 460 telephone, 117 written, and 9 walk-in inquiries from the public about potential complaints (compared with 654 telephone, 87 written and 17 walk-in inquiries in 2004 and 562 telephone, 139 written and 7 walk-in inquiries in 2003). ODC mailed 585 complaint packets and information forms (compared with 758 packets sent in 2004 and 655 in 2003).²

Case Prosecutions

Disciplinary Counsel appeared at eight formal hearings, 22 Rule 26 consent hearings (involving both formal and informal cases) (eight additional Rule 26 tendered admissions were reviewed by COP where the hearing was waived by the Respondent), 11 show cause hearings, two reinstatement hearings, one Rule 28 hearing, and one Rule 25 request for suspension recommendation over the course of the six COP meetings held during the year (53 total cases), compared with 38 total cases over five meetings in 2004 and 37 total cases over six meetings in 2003.

Nature of Grievants

Clients or ex-clients filed about 67 percent of all complaints in which ODC opened case files (compared with 64 percent in 2004 and 54 percent in 2003). Attorneys filed about 10 percent (nine percent in previous three years), while opposing parties filed about 10 percent (compared with 15 percent in 2004 and 18 percent in 2003). Third parties or other non-categorized complainants made up nine percent of the complaints (same in 2004 and 19 percent in 2003). Courts referred about two percent of the matters (three percent in 2004). One attorney self-reported.

Practice Areas Involved in ODC Case Files

Most grievances were filed against lawyers practicing in criminal law (about 43 percent, compared with 41 percent in 2004; 29 percent in 2003), then family law (18 percent, compared with 15 percent in 2004 and 14 percent in 2003), civil litigation (16 percent, compared with 19 percent in 2004 and 18 percent in 2003), personal injury claims (four percent, down from eight percent in 2004 and 10 percent in 2003), probate matters (four percent, down from six percent in 2004 and 2003), bankruptcy (three percent, down from four percent in 2004 and 2003), real estate matters (three percent, no exact statistics for 2004 and 2003), business matters (two percent, compared with less than one percent in 2004 and less than six percent in 2003). Lawyers practicing in other areas comprised of seven percent.

² Since the time that ODC's website was up and running, ODC began referring people directly to the website where they could review and download ODC's information and forms. ODC did not keep a log of these inquiries. The result of these referrals is a decrease in telephone inquiries and packets mailed.

Types of Allegations in ODC Case Files

About 43 percent of complaints allege that the lawyer did not act competently or did not perform promised legal services at all, delayed performance beyond what was expected, or failed to adequately communicate with the client (compared with 46 percent in 2004 and 30 percent in 2003). Another eight percent of complaints allege interference with justice by the lawyer by, for example, failing to expedite litigation, communicating with represented adversaries, making misrepresentations to a court, disobeying court orders, or filing non-meritorious claims (down from 13 percent in 2004 and 16 percent in 2003). About 10 percent of all cases allege failure by the lawyer to satisfy duties to the client, including disregarding conflicts of interest, improperly withdrawing from representation, failing to turn over files to the client, or settling cases without authority (compared with 13 percent in 2004 and 15 percent in 2003). Another three percent allege the lawyer charged excessive fees (compared with seven percent in 2004 and two percent in 2003). About three percent of the cases alleged prosecutorial misconduct (four percent in 2004 and no statistic for 2003). Seven percent relate to the lawyer's personal conduct, including dishonesty and misrepresentations to non-clients (compared with three percent in 2004 and four percent in 2003). About two percent of the cases relate to allegations of trust account violations, failure to maintain a proper IOLTA account and records, or failing to safe keep property (compared with three percent in 2004 and less than one percent in 2003). Less than one percent alleged unauthorized practice of law by suspended or disbarred attorneys (same in 2004 and down from two percent in 2003). No cases alleged breach of confidentiality (compared with less than one percent in 2004 and one percent in 2003). Less than one percent in each category allege other violations.

Please note that many of the cases involve allegations of multiple rule violations. Due to the limitations of ODC's database application, only one rule violation per case is reported in these statistics.

Disposition of Cases by Review Panels

Of the 353 cases reviewed, the COP dismissed 73 percent after a Review Panel determined that either the complaint was outside the disciplinary jurisdiction of the Court or there was no evidence or insufficient evidence that a violation had occurred (up from 72 percent in 2004 and 65 percent in 2002 and 2003). The Review Panel recommended further ODC investigation in only about one percent of the cases reviewed (same in 2004 and down from two percent in 2003). It recommended discipline in about 16 percent of the cases reviewed (compared with 26 percent in 2004 and 17 percent in 2003). Eight percent (29 cases) of the cases reviewed resulted in a recommendation for formal discipline (compared with 18 percent in 2004 and 11 percent in 2003). Eight percent (28 cases) of the cases reviewed resulted in a recommendation for informal discipline (compared with

nine percent in 2004 and six percent in 2003). Two cases were deferred due to the lawyer's transfer to disability inactive status (none in 2004). Eleven show cause orders were issued due to a lawyer's failure to respond to an ODC inquiry (nine in 2004 and 16 in 2003). No cases were resolved by consent discipline by an Adjudicatory Panel under Rule 26 prior to review by a Review Panel (one in 2004 and none in 2003).

Complaints by County

Lawyers in the following counties received the most complaints: Missoula (17 percent), Yellowstone (15 percent), Cascade (9 percent), Flathead (8 percent), Lewis and Clark, Gallatin and Lake (7 percent each), Butte-Silver Bow (6 percent), Fergus, Lincoln and Ravalli (two percent each), and out-of-state attorneys (one percent). Other Montana counties received lesser percentages.

Supreme Court Opinions

During 2005, the Supreme Court issued 21 opinions in lawyer disciplinary cases. Two of those public decisions were in pre-ODC matters:

2005 ATTORNEY PUBLIC DISCIPLINE

S.Ct. CAUSE NO.	ATTORNEY'S NAME	DISPOSITION	DATE ORDERED
03-061	Anciaux, Benjamin	Suspension, 60 days	6/29/05
4-196	Bradley, Joseph M.	Suspension, 3 yrs min.	1/11/05
05-095	Bradshaw, J. Stuart	Suspension, 1 yr min.	12/21/05
05-100	Caughron, R. Clifton	Suspension, 6 mos; Probation, 3 yrs	3/9/05
03-734, 03-790, 04-725	Christian, Dana	Suspension, 3 yrs	2/15/05
05-360	German, Ann	Public Censure	7/6/05
05-076	Jones, Mark	Public Censure	2/15/05
04-325	LaPanne, Peter	Indefinite Suspension	7/26/05
02-369	Lence, John	Disbarment	6/29/05
05-162	Lynch, Jeff Raymond	Indefinite Suspension	3/29/05
04-724	Montgomery, Michael	Public Censure	4/20/05
05-558	Musick, Richard L.	Public Censure	12/21/05
05-042	Paskell, Gregory	Suspension, 30 days; PC; Probation	2/9/05
05-041	Ranstrom, Donald	Public Censure	2/9/05
03-771 and 04-601	Robinson, Matthew	Disability Inactive, 18 mos.	6/21/05
05-526	Sather, Kelli	Public Censure	9/20/05
05-527	Seel, Karl	Public Censure	9/20/05
04-326	Wilcox, Gary E.	Disability Inactive, 6 mos. minimum	1/19/05
87-416	Ziskind, Barry	Reinstated	3/29/05

Suggested Rule Revisions and Other Matters

Revisions to Rules for Lawyer Disciplinary Enforcement

Much of the language of the current Rules for Lawyer Disciplinary Enforcement is derived from the rules that existed prior to the restructuring of the lawyers disciplinary system in 2002. Some parts, but not all, are based on the ABA Model Rules for Lawyer Disciplinary Enforcement. From the limited time the undersigned has worked with the rules, he has found that there are certain internal inconsistencies within the rules. Also, there are a number of areas in which the rules could be improved or clarified. That said, the undersigned prefers to wait until he has more experience working with the rules prior to recommending changes to the Court.

Annotation Project

Former Disciplinary Counsel Tim Strauch, in conjunction with the University of Montana School of Law, completed the annotation project. The final work product is a comprehensive set of annotations of all Supreme Court decisions and COP recommendations in formal disciplinary matters since 1992. ODC will update the annotations annually.

RESPECTFULLY SUBMITTED this ____ day of March, 2006.

OFFICE OF DISCIPLINARY COUNSEL

By: _____
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